



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD MND MNR FF

Introduction

This hearing dealt with (a) an application by the landlord for a monetary order and an order allowing retention of the security deposit; and (b) an application by the tenant for a monetary order and an order for return of the security deposit. The landlord has also requested recovery of the filing fee from the tenant. Both parties attended the hearing and had an opportunity to be heard.

Issue(s) to be Decided

Are the parties entitled to the requested orders?

Background and Evidence

This tenancy began on November 1, 2015 and ended on April 30, 2016. The rent was \$4500 per month. A security deposit of \$2250 is still in the possession of the landlord. Initially, the tenant had paid a security deposit of \$4500 but the over payment of \$2250 was returned to the tenant pursuant to a settlement agreement between the parties dated April 20, 2016. The rental unit is a 3,000 square foot detached home in Richmond.

An important fact in this case is the settlement agreement (mentioned above) that was reached between the parties on April 20, 2016. The terms of that settlement were as follows:

Pursuant to the above provision, discussion between the parties during the hearing led to a settlement / resolution. Specifically, the parties agreed and confirmed as follows;

- 1. The tenant and landlord agree the tenancy ends effective April 30, 2016 and the tenant will vacate the rental unit at this time*
- 2. The tenant and landlord agree the landlord will pay the tenant \$2,250.00 by delivering the cheque to Faizal Nuraney at #410-1333 West Broadway, Vancouver BC V6H 4C1*

3. *The tenant and landlord agree the landlord will conduct an inspection of the rental unit on April 21, 2016*
4. *The tenant and landlord agree the landlord will correspond through legal counsel Faizal Nuraney only*
5. *The tenant and landlord agree the tenant will cash the security deposit cheque in the amount of \$2,250.00 which is already in the possession of Faizal Nuraney*
6. *The tenant and landlord agree the landlord will withdraw her application for dispute resolution scheduled for 9:30 A.M. on May 17, 2016*

*The above particulars comprise **full and final settlement** of all aspects of the dispute arising from this application.*

This Decision and Settlement Agreement is final and binding on both parties.

Of note for the matters before me, the settlement agreement stipulated that the tenant would move out on April 30, 2016, that a move-out condition inspection would take place on April 21, 2016 and that the landlord would only communicate with the tenants through their lawyer.

The tenants did in fact move out on April 30, 2016 but the move-out inspection did not occur on the date stipulated. The landlord testified that she did not attend the scheduled inspection on April 21st because she “*was frightened*”. It was acknowledged by both parties that the landlord’s husband was at the rental unit on the move-out date but that he was not authorized by the landlord to do a move-out inspection at that time. The landlord testified as follows: “*My husband was there on move-out to collect the key but not to do an inspection.*” The landlord testified that she later sent notices (one on May 2nd and one on May 4th) to the tenants for a move out inspection but that they did not respond to these notices. The tenants claimed to have been “*too frightened*” to show up for the new inspection dates. The landlord then proceeded to do a move-out inspection by herself on May 5, 2016.

There was no condition inspection report completed upon move-in.

On May 5, 2016 the landlord filed her application for dispute resolution and then an amendment thereto on October 21, 2016. The tenants filed their application for dispute resolution on May 25, 2016.

Analysis

Landlord’s Claim

The landlord has made a total monetary claim of \$2314.45 comprised of the following:

Drain repair in master bathtub (1 st Call Plumbing)	\$93.45
Ant treatment (Gilpins Pest Control)	\$341.25
Cleaning ("The Maid Service")	\$729.75
Garage Remote Control (Home Depot)	\$150.00
Unpaid Utility Bills (BC Hydro & Terasen Gas)	\$200.00
Painting estimate for scratched walls	\$800
TOTAL	\$2314.45

I shall deal with each of these claims in turn. In dealing with each claim I am guided by the general principle that the party asserting the claim bears the burden of proving that claim on a balance of probabilities.

Drain Repair (\$93.45) – The landlord claims that the tenant clogged the drain in the master bathtub. The landlord testified that the plumber told her that there was debris stuck in the pipes. The tenant disputes this claim. The tenant testified that the drain was not working very well when they were living there, that it was “draining very slowly”. Given the contradiction between the parties as to who is responsible for the slow drain, I am unable to determine on the facts before me, who is liable for the plumbing bill. **As a result, I find that the landlord has not established this claim.**

Ant Treatment (\$341.25) – The landlord claims that when she went to the unit after the tenants had left, she found ants everywhere in the apartment. The landlord alleges that the ants were due to the tenants’ “poor cleanliness”. The tenants dispute this claim. The tenants point to the Gilpins Pest Control invoice which states that the ant treatment was done outside on the “pavements”. The invoice does not say anything about interior ant treatment. I find, based on the information before me, that there is no way to determine whether the ant outbreak was caused by the tenants or whether it was a normal ant outbreak from the pavement that occurs at certain times of the year. **As a result, I find that the landlord has not established this claim.**

Cleaning (\$729.75) – The landlord claims that the tenants failed to properly clean the rental unit when they vacated. However, the tenants claim that they had the rental unit professionally cleaned upon move out and provided an invoice to that effect. The landlord pointed out that the tenants’ invoice was dated the wrong year. The tenants responded that this was just an error. The tenants testified that they had the unit

professionally cleaned because the female tenant was nine months pregnant at the time of move-out. One problem for me in trying to determine the condition of the unit at move out is that there are no useful photos showing whether the unit was in fact not properly cleaned by the tenants at the end of the tenancy. The landlord did submit a few photos but they show are photocopies and very grainy and at least one of the photos showing food stored in plastic bags was taken prior to move out. As a result they are of little use in helping me to understand the condition of the unit at move out. The other problem is that there never was a move-out condition inspection report completed with both parties participating. In essence this part of the dispute comes down to one person's word against the other and since the landlord bears the burden of proof, I find that that burden has not been met by the landlord. **As a result, I find that the landlord has not established this claim.**

Garage Remote Control (\$150.00) – The landlord claims that eh tenant only returned one of two garage remote controls. The tenant claims they were only given one remote and that that remote was returned. The landlord pointed out that the move-in report states that two garage remotes were given to the tenants upon move-in but the tenant replied that the move-in report was never signed by the tenants so the remote control issue cannot be proved. The tenant reiterated that they only had one remote control because they only had one car when they first moved into the unit. So once again, it is one party's word against the other and since the landlord bears the burden of proof, I find that that burden has not been met by the landlord. **As a result, I find that the landlord has not established this claim.**

Unpaid Utility Bills (\$200.00) – The landlord claims that the tenants owe her \$200.00 in extra hydro and gas charges. The landlord acknowledges that the rent was supposed to include hydro and gas but the testified that she was very upset with amount of overuse by the tenants. For this reason the landlord believes she is justified in seeking an extra payment from the tenants. The tenants dispute this claim on the basis that the tenancy agreement did in fact stipulate that utilities were included in the rent and that the landlord cannot unilaterally change this portion of the contract. In this regard I agree with the tenants. The landlord cannot unilaterally change the terms of the tenancy agreement. If the rent was to include utilities, that is the end of the matter. **I therefore dismiss this claim.**

Painting estimate for scratched walls (\$800.00) – The landlord claims that the tenants scratched the walls of the rental unit and that they will have to be repaired and repainted. The landlord testified that she had not yet had the wall repair work done but had obtained an estimate in the amount of \$800 for the work. The landlord did not provide any photos of the damage but claims that the scratches look like they were caused by the tenants in the course of moving their furniture. The tenants dispute this

claim. The tenants claim to have no knowledge of any scratches to the walls and deny any liability for this. Again, it is one party's word against the other and since the landlord bears the burden of proof, I find that that burden has not been met by the landlord. **As a result, I find that the landlord has not established this claim.**

Tenants' Claim

The tenants have made a monetary claim against the landlord in the amount of \$12,250.00 comprised of the following:

Administrative Penalty (s. 94.1)	\$5,000.00
Administrative Penalty (s. 95.2)	\$5,000.00
Security Deposit return	\$2,250.00
TOTAL	\$12,250.00

I shall deal with these claims in turn.

Administrative penalties (\$10,000.00) – The tenant is seeking administrative penalties against the landlord for what they see as retaliatory actions by the landlord in bringing these claims against the tenants. The tenants claim that the landlord acted in bad faith by bringing these claims without any notice almost immediately following the settlement that was reached between the parties on April 20, 2016. The tenants also point out that the landlord breached the settlement agreement by failing to attend the move out inspection on April 21, 2016.

As I advised the tenants at the hearing, I do not have the authority to order administrative penalties under the Act. **As a result, I must dismiss this portion of the tenants' claim.**

Security Deposit (\$2250.00) – I have found that the landlord failed to establish any of the claims contained in her application. **I therefore order that the landlord immediately return to the tenant the full amount of the security deposit in the amount of \$2250.00.**

Conclusion

I hereby dismiss the landlord's application in its entirety.

I dismiss the landlord's request to recover the filing fee from the tenants.

I order that the landlord immediately return to the tenant the full amount of the security deposit in the amount of \$2250.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 12, 2016

Residential Tenancy Branch